



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 487

IN THE MATTER OF ROBERT HOWARTH

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Robert Howarth ("Howarth") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Howarth had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on February 25, 1994, voted to find reasonable cause to believe that Howarth violated G.L. c. 268A, §3.

The Commission and Howarth now agree to the following facts and conclusions of law:

1. Howarth served in the state legislature from January 1981 to January 1993. During that time, he served on various committees including the Insurance Committee and the Health Care Committee.
2. Howarth sponsored or co-sponsored three bills affecting the insurance industry.
3. In addition, Howarth, as a member of various legislative committees, participated in many hearings on bills of interest to the insurance industry. Such participation included voting on whether such bills should be reported out of committee. Howarth also voted on bills of interest to the insurance industry when they reached the House floor.
4. During the period relevant here, F. William Sawyer ("Sawyer") was the senior John Hancock Mutual Life Insurance Company, Inc. ("Hancock") lobbyist responsible for Massachusetts legislation. At all relevant times, Sawyer was a registered legislative agent (for Hancock) in Massachusetts. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all 50 states. It offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, its activities are more comprehensively regulated by Massachusetts than by any other state.
5. At all relevant times, Howarth knew that Sawyer was a Massachusetts registered lobbyist for Hancock. Sawyer lobbied Howarth regarding various pieces of legislation.
6. Lobbyists are employed to promote, oppose or influence legislation.
7. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators through meals, drinks, golf and sporting events in order to develop the desired goodwill and personal relationships.
8. Sawyer paid for Howarth to stay in a room at the Copley Plaza Hotel on November 14, 1988. The cost

of this lodging was \$131.64.

9. Annually from 1988 to 1991, Sawyer took a group of legislators and their guests out for dinner and drinks at a Cape Cod restaurant. In 1988, the dinner was held at The Regatta Restaurant in Cotuit. In 1989 through 1991, the dinner was held at the Cranberry Moose Restaurant in Yarmouthport. The cost of these dinners was between \$736.10 and \$1,131.89 annually. On the evenings of July 1, 1988, July 2, 1989, July 2, 1990, and July 4, 1991, Howarth and his wife attended these dinners. The Howarths' pro rata share of the cost of the dinners and drinks was \$81.79, \$174.19, \$150.91 and \$125.54, respectively.

On the weekend of these Cape Cod dinners, Sawyer also paid Howarth's expenses to golf at the Hyannisport Country Club. Howarth's expenses for 1988 through 1991 were \$28.24, \$47.74, \$52.19 and \$56.19, respectively. The total cost of Howarth's dining and golf expenses from 1988 through 1991 were \$110.03, \$221.93, \$203.10 and \$181.73, respectively.

10. On January 3, 1991, Howarth and his wife were Sawyer's guests for dinner at the Copley Plaza Hotel. The Howarths' pro rata share of the cost of the dinner was \$107.75.

11. Section 3(b) of G.L. c. 268A prohibits a state employee from directly or indirectly receiving anything of substantial value for or because of any official act performed or to be performed by him.

12. Massachusetts legislators are state employees.

13. Anything worth \$50 or more is of substantial value for §3 purposes.^{1/}

14. By accepting a total of \$956.18 in drinks, meals and entertainment from Sawyer, all while Howarth was in a position to take official actions which could benefit the lobbyist, Howarth accepted items of substantial value for or because of official acts performed or to be performed. In doing so he violated §3(b).^{2/}

15. The Commission is aware of no evidence that the gratuities or gifts referenced above were provided to Howarth with the intent to influence any specific act by him as a legislator or any particular act within his official responsibility. The Commission is also aware of no evidence that Howarth took any official action concerning any proposed legislation which would affect any of the registered Massachusetts lobbyists in return for the gratuities or gifts. However, even though the gratuities were only intended to foster official goodwill and access, they were still impermissible.^{3/}

16. Howarth fully cooperated with the Commission throughout this investigation.

In view of the foregoing violations of G.L. c. 268A by Howarth, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Howarth:

(1) that Howarth pay to the Commission the sum of two thousand, eight hundred and fifty dollars (\$2,850.00) for violating G.L. c. 268A, §3;^{4/} and

(2) that Howarth waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

Date: May 12, 1994

^{1/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

^{2/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public

official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356. Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

On the present facts, §3 applies to the lobbyist entertaining Howarth where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.

^{3/} As discussed above in footnote 2, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between the lobbyist and Howarth.

^{4/} This amount is approximately three times the value of the \$956.18 in prohibited gratuities received by Howarth in violation of §3. It represents both a disgorgement of the gratuities and a civil sanction.